IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 6358 of 2007(F)

PETITIONER:

K.M.KADIRIKOYA, S/O.MOHMMED,
'JASNA',5/1510,
KILIYANADU SCHOOL ROAD,KOZHIKODE.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

1. THE KOZHIKODE DISTRICT CO-OPERATIVE BANK LTD.,NO.F1635 REPRESENTED BY ITS GENERAL MANAGER, KALLAI ROAD, KOZHIKODE.

2. THE MANAGER, KOZHIKODE DISTRICT CO-OPERATIVE BANK, VAVOOR ROAD BRANCH, KOZHIKODE.

3. THE SPEICAL SALE OFFICER, KOZHIKODE DISTRICT CO-OPERATIVE BANK, KOZHIKODE.

4. THE REGISTRAR, CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM.

BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

==========

W.P.(C).No.6358 of 2007

==========

Dated this the 26th day of February, 2007

J U D G M E N T

The petitioner is admittedly a defaulter in repayment of the loan amounts due to the 1st respondent bank. In respect of the same, there was an arbitration case as also an appeal before the Co-operative Tribunal against the award in the arbitration case. The Tribunal granted the petitioner some respite to the petitioner by reducing the interest. Subsequently, the petitioner was served with a recovery notice alleging that, the amount demanded is without taking into account the actual interest payable. The petitioner approached this court by filing W.P(C).No.4224/2005. By Ext.P7 judgment, this court directed the petitioner to pay 10 per cent of the amount, on payment of which, the 1st respondent society was to give the petitioner a statement of accounts, as also to consider the

petitioner's eligibility for the benefit under the One Time Settlement scheme. The petitioner has now filed this writ petition stating that no statement of accounts has been furnished to him as directed in Ext.P7 judgment and without furnishing that statement of accoutns, the bank has now proceeded with the steps for sale of the mortgaged properties. He is challenging those proceedings. The learned standing counsel for the 1st respondent society takes notice and submits that the statement of accounts was actually given to the petitioner one day prior to Ext.P7 judgment. Ext.P7 judgment is dated 4.2.2005 and according to the counsel for the 1st respondent, the statement of accounts was given on 3.2.2005. The counsel for the petitioner is not in a position to verify the fact as to whether his client had received such a statement of accounts as stated by the counsel for the 1st respondent. I do not intend to go into those controversies now. Admittedly, the amounts are still due; only the quantum is in dispute.

According to the counsel for the 1st respondent, total amount due as on today is Rs.88,613/-. Even if the petitioner's contentions are to be totally accepted, a substantial amount out of this amount would still be due to the 1st respondent bank. Therefore, I am of opinion that as a condition for further indulgence by this court, the petitioner has to pay a substantial amount towards the loan amount. Accordingly, the writ petition is disposed of as follows:

The petitioner shall pay an amount of Rs.30,000/- within three weeks from today. Within the said period, the 1st respondent shall consider the petitioner's claim for one time settlement and serve an order on the petitioner regarding the amount payable by the petitioner under the one time settlement scheme, if the bank accepts his claim for the benefits under the OTS scheme. The order shall be served on the petitioner by registered post acknowledgment due. Along with the order of one time settlement, the petitioner shall also be

served with a statement of accounts as to how the bank has arrived at this figure for one time settlement. If the claim for OTS is not accepted then also a statement of accounts on the balance due from the petitioner shall be served on the petitioner within the abovesaid time. On receipt of the said order or statement, the petitioner shall pay the balance amount in four equal monthly instalments starting from the first day of the month immediately succeeding the receipt of the order. The succeeding instalemnts shall also be paid on the 1st day of the month. If the petitioner makes default in payment of either the lump sum amount as directed above, or the instalments payable in accordance with the OTS scheme, if granted by the 1st respondent society or in accordance with the statement of accounts, the 1st respondent society would be free to take further proceedings pursuant to the notice now issued without having to issue any fresh notice or proceedings. Needless to say, if the petitioner

complies with the above said directions, further coercive proceedings would be kept in abeyance.

The writ petition is disposed of as above.

sdk+ S.SIRI JAGAN, JUDGE